

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION

VIKING INSURANCE COMPANY
OF WISCONSIN,

Plaintiff

v.

WAYMAN BRYANT,
6547 Castle Heights
Joplin, Missouri 64804

Defendant.

CASE NO: 3:13-cv-5072

MOTION TO DISMISS FOR FAILURE TO SUE
IN NAME OF REAL PARTY IN INTEREST

COMES NOW Defendant, Wayman Bryant and moves this Honorable Court for its Order Dismissing Plaintiff's Complaint, upon the grounds and for the reason that Plaintiff Viking Insurance Company of Wisconsin is not the real party in interest in that:

Rule 17(a)(1) requires that "An action must be prosecuted in the name of the real party in interest."

- (a) Plaintiff Viking Insurance Company of Wisconsin is involved in this matter solely by reason of having a contract of motor vehicle liability insurance with policy limits of \$25,000 per person injured.
- (b) Plaintiff's insured is Dalton Anderson (Complaint, ¶5).
- (c) This is an action to enforce an alleged contract of settlement (which Defendant denies) between Wayman Bryant and Dalton Anderson.
- (d) Defendant has not asserted a claim against the plaintiff, and even if there is in the future a claim against plaintiff for bad faith, that claim would be held by the insured Dalton Anderson and not Wayman Bryant.
- (e) Plaintiff Viking Insurance Company of Wisconsin is not the real party in interest in seeking to enforce the alleged settlement (which defendant denies).

WHEREFORE, Defendant moves this Honorable Court to dismiss the Complaint for the reason that it is not brought by the real party in interest, and for such other and further relief as to this Court deems fit and proper in the premises.

Respectfully submitted,

JOHNSON, VORHEES & MARTUCCI

/s/ ROGER JOHNSON

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that I have served a copy of the foregoing document on all parties in this matter by filing electronically with the Court which will send notification of such filing to the attorneys of record listed below on the 28th day of June, 2013.

W. James Foland
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/s/ ROGER JOHNSON

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